

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA

CIVIL NO. 1:CV-01-336-01

v.

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TYRONE SMITH a/k/a "Manny"

M E M O R A N D U M

Before the court is a motion filed by Defendant pursuant to 28 U.S.C. § 2255 to vacate, set aside or correct a sentence. On November 24, 2003, Defendant was sentenced by this court. A notice of appeal was filed on December 15, 2003. On May 6, 2005, the case was remanded for a resentencing which was accomplished on July 28, 2005. On August 2, 2005, Defendant filed a notice of appeal as to the resentencing judgment. The Third Circuit Court of Appeals affirmed the judgment of this court on November 1, 2005. A petition for a writ of certiorari was denied by the United States Supreme Court on December 12, 2005. The court of appeals issued its mandate on January 4, 2008. The instant petition was filed on April 16, 2009.

Title 28 U.S.C. § 2255 provides for a one (1) year period of limitation to file a motion under this section. The limitation period in Defendant's case begins to run from the date on which the judgment of conviction becomes final. The judgment became final on January 4, 2008. The instant motion is untimely and will be dismissed.

s/Sylvia H. Rambo
United States District Judge

Dated: April 20, 2009.

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UNITED STATES OF AMERICA : CIVIL NO. 1:CV-01-336-01
v. :
TYRONE SMITH a/k/a "Manny" :
:

O R D E R

AND NOW, this 20th day of April, 2009, **IT IS HEREBY ORDERED**
THAT the motion filed pursuant to 28 U.S.C. § 2255 is **DISMISSED**. This court
declines to issue a certificate of appealability. The Clerk of Court shall close the
file.

— s/Sylvia H. Rambo —
United States District Judge